IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

(No. 2073)

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT, PETITIONER.

VS.

THE UNION CENTRAL LIFE INSURANCE COMPANY, RESPONDENT.

IN BANKRUPTCY UNDER SECTION 75 (s), ACT MARCH 3, 1933 AND AUGUST 28, 1935. PENDING BEFORE HONORABLE THOMAS W. SLICK, JUDGE OF THE UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION

NO.....

ORIGINAL.

DEBTOR'S MOTION FOR LEAVE TO FILE PETITION FOR WRIT OF PROHIBITION DIRECTED TO THE HONORABLE JUDGE OF SAID DISTRICT COURT AND PETITION FOR WRIT OF PROHIBITION

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now James M. Wright, the Debtor in the above entitled cause, by Samuel E. Cook, his Counsel and moves the Court as follows:

1. That the Debtor asks leave to file the petition for a writ of prohibition, hereto annexed.

2. The controversy in this petition grows out of the decision of the Supreme Court (between the parties herein) in the case of James M. Wright vs. The Union Central Life Insurance Company, December 9, 1940. (85 L. Ed. Adv. Opinions 166). The value of the land herein was an issue before the District Court at the hearing on October 21, 1938. The Court heard the evidence and made a special finding of the facts and stated conclusions of law thereon. It found that the land was of the value of $6000.00. That afterwards on February 11, 1939, said District Court rendered judgment on said finding. It refused to allow the Debtor the right to redeem the land at said fixed value of $6000.00 but ordered the land sold at public auction and gave the Respondent the right to bid the whole amount of its debt of nearly $16000.00 at said sale. That entirely defeated redemption. The Debtor appealed to the Circuit Court of Appeals for the Seventh Circuit. He did not assign any error on the value of the land. The Respondent did not assign any cross-errors and thus did not question the finding of the Court as to the value of the land. On the application of the Debtor the Supreme Court granted certiorari "because of the importance of the problem to the orderly administration of the Act. (Section 75 of the Bankruptcy Act of March 3, 1933, and amended subsection (n) and subsection (s) of August 28, 1935).

The Debtor did not question the finding as to the value of the land. Neither did Respondent.

The Supreme Court handed down its decision on December 8, 1940. It reversed the decision of the District Court and Court of Appeals and held that the lower Courts erred in not allowing the Debtor to redeem at said value as fixed by the trial Court. The Court said:

"We hold that the debtor's cross petition should have been granted; that he was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have a reasonable time, fixed by the Court, in which to **redeem at that value**; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted." (Opinion p. 6) (Italics our own). After the case came back to the District Court the Respondent petitioned it to try the question of the value of the land again—a second time.

The Debtor objected and contended in substance that the question was tried once and was settled and contended that the Respondent had made no objection to it at the time. That it did not appeal from said finding and judgment to the Court of Appeals. That it did not question it in the Supreme Court and hence was bound by the $6000.00. That the question had been adjudicated, that the Respondent had its day in Court and that the Supreme Court had adopted the sum of $6000.00 as the basis of its opinion and hence that had become the "law of the case" and it was conclusively bound thereby. That

the Respondent could not remain silent for over two years after the finding of the District Court fixing the value at $6000.00, and then ask for another trial on that question. On June 6, 1941, the District Court ordered a reappraisement and set the hearing for June 18, 1941.

The Debtor contends the District Court is bound by the decision of the Supreme Court when it said—"that the value having been determined at a hearing in conformity with his (the Debtors) request, he (the Debtor) was then entitled to have a reasonable time fixed by the Court, in which to redeem at that value" ($6000.00). The Debtor is bound by that and must pay the $6000.00 to redeem. If he is bound, the Respondent is by the same token also bound, and must accept the $6000.00. The Debtor cannot ask to pay a cent less and the Respondent cannot demand a cent more. It follows that the action of the District Court in granting the Respondent's petition to try that question again and setting it down for trial is not in line with the decision of this Court and was "assuming an unwarranted jurisdiction" and "proceeding in excess of its lawful jurisdiction" or authority. Hence, this Court has the right to intervene. We will only cite Vol. 7, section 3648 Cyclopedia Federal Procedure and cases cited under note 3, p. 637. Other cases will be cited in the brief.

3. And asks that a rule be entered herein and issued, directing the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and Honorable Thomas W. Slick, Judge of said Court to show cause why a writ of prohibition should not issue against him in accord-

ance with the prayer of said petition hereto annexed and why said petitioner should not have such further relief in the premises as may be just and that said Court proceed no further in said cause until the decision of the issue as to prohibition. Or in the alternative if deemed proper that a writ of mandamus be issued commanding said Judge of said District Court to proceed with the Administration of said proceedings in bankruptcy and to allow said Creditor to redeem the land therein at its value of $6000.00 as fixed by said District Court and confirmed by said Supreme Court in Wright vs. Union Central Life Insurance Company, (the parties herein) December 9, 1940 (85 L. Ed. Adv. Ops. 166). And requests notice be given as required.

Dated June ....., 1941.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana,
Counsel for Petitioner.

STATE OF INDIANA)
COUNTY OF JAY) SS:

James M. Wright being duly sworn on his oath says, that he is the petitioner in the above cause and that the facts set out in the above petition are true, as he is informed and believes.

JAMES M. WRIGHT,
Petitioner.

Subscribed and sworn to before me this day of June, 1941.

SAMUEL E. COOK,
Notary Public.

My Commission Expires 3-30-43.
(SEAL)

II

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

IN THE MATTER OF JAMES M. WRIGHT, Debtor vs. THE UNION CENTRAL LIFE INSURANCE COMPANY, PETITION FOR A WRIT OF PROHIBITION AGAINST HONORABLE THOMAS W. SLICK, UNITED STATES DISTRICT JUDGE OF THE NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION.	NO..... IN BANKRUPTCY UNDER SECTION 75 (s) ORIGINAL PETITION FOR WRIT OF PROHIBITION, ETC.

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of James M. Wright, Debtor and petitioner vs. the Honorable Thomas W. Slick, Judge of the United States District Court for the Northern District of Indiana, Fort Wayne Division, sitting in bankruptcy in said District respectfully represents to this Court the following:

1. That there is now pending in said District Court the petition and schedules of said Debtor and proceedings in bankruptcy under Section 75 of the Act of Congress of March 3, 1933, for Agricultural Compositors and extensions and its amendment by adding a new subsection (s) enacted August 28, 1935 (11 U.S.C.A. 203, 75 (s)).

2. That in said petition and schedules there was included as assets a tract of land of 200 acres situated in Jay County, Indiana, on which said In-

surance Company holds a first mortgage and that it is still in said proceedings and being administered in said District Court, as provided in said Acts of Congress.

3. That said proceedings were pending in said District Court for some time prior to December 9, 1940. That prior to said date said Creditor had filed a petition to dismiss said proceedings as to said land and to end the stay and have it ordered sold at public auction. That said Debtor filed an answer and Cross-petition to said petition. That in said Cross-petition said Debtor requested said Court to hear evidence and to fix the value of said real estate as provided in paragraph (3) of said subsection (s) and to enter an order allowing him to redeem said land at said value and, when so paid, that the Court enter an order in said proceedings turning over said land to him free and clear of said mortgage debt and to discharge him on account of any deficiency judgment. That said Debtor also alleged that the only way he could redeem said land was by allowing him to pay said appraised value as provided in said Acts and that said debt was double the value of said land and hence he could not be refinanced and rehabilitated on the basis of said whole debt.

4. That said Respondent took issue with said Cross-petition and filed an answer in which it denied the right of the Debtor to redeem said land or to have it turned over to him free and clear of incumbrances upon payment of the value fixed by an appraisement and be discharged of liability on account of any deficiency judgment:

That the Respondent requested the Court in

writing to direct an immediate sale of said real estate and contended that said written request took precedence over the right given the Debtor to purchase (redeem) said land and that it should not be turned over to him at the appraised value thereof free and clear of incumbrances and that said Debtor is not entitled to any further relief under Section 75 (s) of said Acts.

5. That said cause and said issues as to said value and the right to redeem came on for hearing before said Court on October 21, 1938. That said Court heard the evidence as to the value of said real estate. That on January 30, 1939, said Court made and filed its special finding of facts and stated its conclusions of law thereon. Among other things said Court found that the value of said land was $6000.00 and the amount of the mortgage debt was $15903.68 and it stated its conclusions of law that the law was with the Creditor or petitioner and said Court refused to allow said Debtor to redeem said real estate at said value of $6000.00 but ordered said land sold at public auction. That said $6000.00 is all said land is worth and all he could afford to pay therefor. That said Respondent took no exceptions to said finding that said land was worth $6000.00 and made no objection to said finding as to said value.

6. That on February 11, 1939, said Court rendered judgment on said findings and conclusions of law, in effect that it refused to allow said Debtor to redeem said land at said $6000.00 but ordered said real estate sold at public auction and allowed said Creditor to bid its whole debt at said sale which was then approximately $16000.00.

7. That afterwards said Debtor appealed from said judgment of said District Court to the Circuit Court of Appeals for the Seventh Circuit. That in his assignment of errors in said appeal the Debtor did not assign as error the action of the District Court in fixing said value, but the Debtor did assign as error the action of said Court in denying him the right to redeem said land at its appraised value of $6000.00.

And also assigned that said Court erred in forfeiting said land and ending the stay and in ordering it sold at public auction and thereby depriving him of the benefits of said Act. (Requiring him to pay $16000.00 for $6000.00 worth of land). That said Respondent did not assign any cross-error on the action of the Court in fixing said value at said sum ($6000.00) or made any objection thereto in any way.

8. That afterwards said Debtor filed his petition in said Supreme Court for certiorari which was granted. That said Debtor did not in said petition assign any error as to the action of said Court in fixing the value of the land at $6000.00 nor question the same in any way. But said Debtor did assign as error the action of said Court of Appeals in affirming the decision of said District Court refusing to allow the Debtor to redeem said land at said $6000.00 as fixed by said Court.

9. That on December 9, 1940, said Supreme Court handed down its decision and opinion in said appeal, reversing the judgment of said District Court and said Court of Appeals and holding among other things that the action of said Courts in deny-

ing said Debtor an opportunity to redeem said land "at the value fixed by the Court, before ordering a public sale was reversible error" and then the Court in the said opinion said:

"We hold that the debtor's cross-petition should have been granted; that he was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have a reasonable time, fixed by the Court, in which to **redeem at that value**; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted." (Italics our own) Opinion p. 6.

10. Then the Court added: "To the extent indicated, we modify the judgment and we remand the cause to the District Court for further proceedings."

11. That means that the District Court should carry out the judgment by allowing the Debtor to redeem the land at the fixed value of $6000.00. It means that was all he would have to pay to redeem. The Supreme Court thus confirmed and adopted the $6000.00 as the basis for redemption in the future.

12. Mark the language of the Court. "He was then entitled to have a reasonable time fixed by the Court, in which to redeem **at that value** (Italics our own) ($6000.00). And then to clinch the matter the Court said: "And if he did so redeem (pay the $6000.00) the land should be turned over to him free and clear of incumbrances and his discharge granted." Opinion p. 6. A brief will be filed later.

13. That the action of said District Judge in not

allowing said Debtor to redeem at said $6000.00 and in granting said petition to reappraise said real estate was "assuming an unwarranted jurisdiction" over said question and was proceeding in excess of his lawful authority which calls for the exercise of this Court's power of supervision over the actions of the Inferior Federal Court. Vol. 7, section 3648 Cyc. Fed. Proc.

14. That said Court has set said matter of said proposed re-appraisement for trial for June 18, 1941, and the petitioner believes that unless restrained by this Court, he will proceed to hear the same. That there is an emergency to maintain the status in quo until said motion for leave to file this petition can be heard and also until the above petition can be heard on the merits by this Court and that said Judge of said Court should be restrained from proceeding with the trial of said question until said motion and this petition can be heard and determined.

15. In conclusion: This controversy arises in the execution of the judgment of this Court by the District Court. The parties are the same. The Supreme Court expressly held that the Debtor had the right to redeem his home at the $6000.00, the value fixed by said District Court. It required him to pay that sum and he is bound by it and must pay it. The Respondent is also bound by it and must accept it and cannot demand a cent more. The District Court is bound by the decision too. It has no power to change the amount. All of the power it has is to fix the time in which the Debtor shall redeem. In not carrying out the decision, and ordering a re-appraisement

and a hearing thereon it is "assuming an unwarranted jurisdiction" and is "proceeding in excess of its lawful jurisdiction." Vol. 7, section 3648 Cyc. Fed. Proc. and cases cited under note 3, p. 637. It is crossing the "dead line." The Debtor has no other direct adequate remedy to stop the Court from crossing the line, except by the aid of the Supreme Court by writ of prohibition or mandate, in the exercise of its great power of supervision over the decisions of the Inferior Federal Courts.

This is certainly a case where this extraordinary remedy should be applied. It is the only practical remedy.

16. Wherefore, your petitioner prays that a writ of prohibition may issue against the said Honorable Thomas W. Slick, Judge of the United States District for the Northern District of Indiana, prohibiting him from proceeding with said cause or in the alternative, if the Court deems it proper to issue a mandate directing said Judge to proceed in said cause in conformity with the Supreme Court in said Wright case and that he be restrained from taking any further action in the matter above set out until the motion for leave can be heard, and until this petition can be heard and determined on the merits and for all the other relief he may be entitled to in the premises.

Respectfully submitted,

SAMUEL E. COOK,
Counsel for Petitioner.

STATE OF INDIANA
COUNTY OF JAY } SS:

James M. Wright being duly sworn on his oath says:

That he is the petitioner herein and that he has read said petition and that the material allegations set therein are true in substance and in fact as he is informed and verily believes.

JAMES M. WRIGHT,
Petitioner.

Subscribed and sworn to before me this ..... day of June, 1941.

SAMUEL E. COOK,
Notary Public.

My Commission Expires 3-30-43.
(SEAL)

Certificate

State of Indiana
County of Huntington } SS:

Samuel E. Cook, Counsel for the above named petitioner, James M. Wright, does hereby certify that in his opinion the above and foregoing petition for a writ of prohibition of said cause is well founded and is presented in good faith and not for delay.

SAMUEL E. COOK,
Counsel for Petitioner.